IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5013 OF 2006.

Ramesh G. Mody. ... Petitioner.
Versus.
Vasantrao V.Mody and another. ... Respondents.

Shri R.B.Jain i/by M/s.Legal Juris for the Petitioner.

Shri P.K.Dhakephalkar, Senior Advocate i/by Shri S.U.Dhakephalkar for the Respondent No.1.

Shri Anant B.Shinde for the Respondent No.2.

CORAM : ABHAY S.OKA, J.

DATED : 8th March, 2007.

P.C.:

1. The submissions of the learned Counsel appearing for the parties were heard.

2. The 1st Respondent made an application before the Court of Small Causes alleging that the Petitioner has committed a civil contempt which is cognizable under the Contempt of Courts Act, 1971. In the said contempt application taken out by the 1st Respondent, the Petitioner raised an objection regarding limitation on the basis of section 20 of the said Act of 1971. The said objection was over-ruled by the learned Judge of the Small Causes Court and the said order has been confirmed by the Appellate Bench in a Revision Application filed by the Petitioner.

3. The submission of the learned Counsel appearing for the Petitioner is that now the contempt application will be finally decided and if a reference is made by

the trial Court to this Court, this Court may take further steps in the matter as the issue regarding the limitation is already decided. He submitted that the Courts below have decided the issue wrongly as on the face of it bar created under section 20 of the said Act of 1971 is clearly applicable. The learned Counsel appearing for the 1st Respondent submitted that the trial Court has only a limited power to make a reference to this Court and ultimately it will be for this Court to consider all issues including the issue of limitation and decide whether any further action needs to be taken.

4. I have considered the submissions. This Court has framed Rules under Article 215 of the Constitution of India and the said Act of 1971 which are called as "The Contempt of Court (Bombay High Court) Rules, 1994". The trial Court has no jurisdiction or power to punish a person for committing civil contempt under the said Act of 1971. At the highest the trial Court can make a reference to this Court and bring to the notice of this Court the allegations made as regards the commission of civil contempt. Only on the basis of such a reference, this Court can take further action. Rule 8(1) of the said Rules provides that every reference received from the trial Court will be posted before this Court for preliminary hearing and for orders as to issue of notice. Rule further provides that only upon such hearing, if this Court is satisfied that a primafacie

case has been made out for issuance of notice, the Court may issue such notice to the contemnor and if this Court is not satisfied, may dismiss the reference or the petition.

5. It is thus obvious that even if reference is made by the trial Court against the Petitioner, this Court is not under an obligation to take further action or to take cognizance. As provided in Rule 8(1), this Court has to be satisfied that a prima-facie case has been made out for issuance of notice. While considering the prima-facie case, this Court is bound to consider the aspect of limitation independently of the findings of the Small Causes Court and Appeal Bench of the Court of Small Causes. Even if this Court issues notice, it is always open for the Petitioner to raise the contention regarding bar of limitation when he is served with notice, if any, issued by this court. The issue regarding bar of limitation will have to be decided by this Court independently of the impugned order passed by the trial Court or the Appeal Bench. Hence the issue of limitation is always open to be decided by this Court.

6. In this view of the matter, it is not necessary to entertain this writ petition under Article 227 of the Constitution of India. Subject to what is stated above, writ petition is rejected.

Judge.